Can Republicans be blamed for not wanting to help the Democratic Party continue its Jekyll-Hyde existence in national politics? This is the long-awaited moment of truth for Democratic leaders who have had two faces—one for the North, another for the South.

CUBAN LIBERATION

Mr. ALLOTT. Mr. President, on June 17, and more recently, in response to the constant demands of the administration that the Republicans offer a concrete proposal with respect to Cuba, we have made suggestions. The questions which we constantly hear are as follows: What would they do? What is their plan? I offered a plan to the administration and have received no reply from it, except one by the distinguished Senator from Oregon [Mr. MORSE], who, I must say, avoided the questions very nicely and did not come to grips with the issues I presented. I answered that statement.

In the Pueblo Chieftain and the Pueblo Star Journal of Pueblo, Colo., on Thursday, June 20, Mr. Frank S. Hoag in an editorial discussed the subject very logically and clearly. The title of the editorial is "Senator Allott's Cuban Liberation Policy Deserves Studied Attention." I ask unanimous consent that the editorial may be printed at this point in my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

SENATOR ALLOTT'S CUBAN LIBERATION POLICY DESERVES STUDIED ATTENTION

Senator GORDON ALLOTT, of Colorado, proposed to the Senate Monday that the United States make the Guantanamo Naval Base in Cuba available as the site for the creation and recognition of a free Cuban government. It would exist only until such time as the Cuban people in a general election would be able to elect their own officers and legislators.

After reviewing the developments of the last 2 years during which time the United States lost its hold and its influence in Cuba by the fiasco at the Bay of Pigs and also by failing to follow through last October on getting the Communists, their specialists and military equipment completely out of Cuba, Senator ALLOTT concludes that the Congress should initiate consideration of what to do about Cuba in the absence of executive leadership.

Senator ALLOTT quotes the words of the Senate Preparedness Investigating Subcommittee's Interim Report on Cuban Military Buildup in which it is stated that Cuba is "an advance Soviet base for subversive, revolutionary, and agitational activities in the Western Hemisphere and affords the opportunity to export agents, funds, arms, ammunition and propaganda throughout Latin America." The subcommittee report concludes: "This evil threat must be eliminated at an early date."

Senator ALLOTT points out that Cubans, who are dedicated and ready to spearhead liberation, must have U.S. encouragement and support. They must have a home for their government. This should be on Cuban soil and the "Naval Station at Guantanamo Bay is perfectly located to become a free Cuban outpost upon the very island of Cuba. It can serve as a moral rallying point for all Cuban patriots. It is exactly what the Bay of Pigs operation was meant to secure; a territorial beachhead on Cuban soil, place for a seat of government for provisional officials upon the very sands of their homeland, and a focus for eventual liberation operations."

The use of Guantanamo for the free Cuban government under their 1940 Constitution would also be in full recognition of our treaty rights and our perpetual leasehold, Senator ALLOTT explained.

Development of the proposal would be done with the "fullest possible collaboration and support of the Organization of American States in recognizing an interim government, in branding the Castro Communists a regime of usurpers, and in training the nucleus of a free Cuban army."

Cuban liberation should be the core of our policy and not the indefinable and ineffective course we have been following in recent years.

Senator ALLOTT recognizes that such a step has inherent legal problems and that there will be accusations of "war mongering." There will be dire threats about "escalating" the crisis and blustering warnings about "rocking the boat."

But "this is precisely the time when the boat needs rocking—right on out of the shoals of procrastination and indecision." We can no longer afford "to permit this advance base of Communist imperialism to harden into a permanent enemy outpost barely beyond our own mainland. These are the realities of an intolerable situation. Our purposes are entirely honorable."

His proposal, without question, deserves the studied attention of our State Department and our Chief Executive, as well as the Congress. We must get our ship of freedom off the shoals where it has been washed because of inept leadership.

POLITICAL PARTICIPATION

Mr. ALLOTT. Mr. President, I suppose it is the experience of all who engage in politics when we go home to encounter people who are frustrated with what they consider to be the failure of our country to achieve our goals in many ways. One of the most thoughtful articles I have seen in a long time was written by Frank F. Brown, Jr., a very good friend of mine, residing in Leadville, Colo. Mr. Brown has written an editorial for the Colorado Episcopalian. Among other things, he said:

The basic reason for both forms of inactivity is, I believe, a lack of awareness of the importance of the issues involved, whether from an absence of opportunity to learn, a self-induced lethargy and ignorance, or a developed preoccupation with material things and creature comforts. Except for the infant or young child, I cannot accept the proposition that people have not had an exposure to the issues at stake. Certainly, if one has had the opportunity, and ignored or rejected it, then the responsibility for the consequences are his and his alone.

In conclusion he said:

We can hardly whimper justifiably at the efforts and sacrifices now necessary to do something about the conduct of our Government when Christians at one time had to be lion fodder to do something about it.

Life is politics. Anytime anyone tries to do anything about anything with more than just themselves involved, they are in politics, influencing a course of action. To the extent that it is "messy" or "dirty," is only a reflection of the frailties of the human participants, and these frailties are not peculiar to activities relating to the Government. You can't do much to influence a football game just sitting in the grandstand, and they don't call off the game just because the field is muddy.

Mr. President, I recommend to my colleagues a reading of this very thoughtful editorial by Frank F. Brown, Jr. I ask unanimous consent that it may be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

POLITICAL PARTICIPATION URGED

(By Frank F. Brown, Jr.)

When I hear a person excusing himself from participating in political activity with a comment such as "politics is too dirty for me," I find myself yielding to the frail human emotions of annoyance, disgust, and even anger. Such a comment is very similar to rationalizations people make to excuse themselves from worshiping God because they feel some one or more members of the congregation have a particular sin which they apparently feel might cast a shadow on their own unblemished character.

Both situations of course involve readily transparent rationalizations—statements giving a supposedly acceptable reason for avoiding a course of conduct one does not wish to pursue for another reason, the real one, which in his mind is not acceptable. It would be highly damaging to the ego, for example, overtly to admit that one did not go to church because they'd rather sleep or fish—or ski—and it is just as ego damaging to admit that becoming informed on political issues or candidates or ringing doorbells to get out the vote requires more effort than one desires to put forth. The risks, I submit, in both forms of rationalization are great; in the one is loss of one's soul and salvation, and in the other is the loss of one's rights and freedoms.

The basic reason for both forms of inactivity is, I believe, a lack of awareness of the importance of the issues involved, whether from an absence of opportunity to learn, a self-induced lethargy and ignorance, or a developed preoccupation with material things and creature comforts. Except for the infant or young child, I cannot accept the proposition that people have not had an exposure to the issues at stake. Certainly, if one has had the opportunity, and ignored or rejected it, then the responsibility for the consequences are his and his alone. In the case of religion, one's actions in endangering his own salvation cannot endanger another, but in politics this is not true—one's lack of action can affect the rights of many, and such a disregard of responsibility may in itself be a breach of moral conduct.

What is politics? Let's start with Webster: "Of or pertaining to the conduct of government; of or pertaining to the exercise of the rights and privileges or the influence by which the individuals of a State seek to determine or control its public policy."

As Christians, I'm sure there is not one among us who would deny we have the duty of spreading the word of God and advancing His Kingdom. I do not recall anything in the Bible or religious teaching that would circumscribe our efforts to the quiet and secure cloisters of our parish house or any other similarly safe and secure habitation away from the rough and tumble reality of human existence. In fact, I recall words like "Go forth," which He commanded, which would indicate we are to do all we can, whenever and wherever.

The Biblical story of the talents has much to offer; wasting them, we of course all realize is bad, but just holding them static is no accomplishment—we are to use them.

We are certainly not doing much to work God's will, "on earth, as it is in Heaven," if we consider our practice of religion only a personal, private thing, or just a 1-hour-on-Sunday exercise. We are not "going forth" if we are not doing anything to influence the composition or activities of our government, or if we sit idly by not caring. Especially in a democratic society, with a re-

publican form of government we have a great deal to do with who the government is, and what it does. The government is merely a convenient vehicle through which we govern our affairs and is necessary only because of the sheer number of individuals and the increasing complexity of relationships which currently exists. When there is only one person, he can manage his affairs; when there are two, if both are equal, they must jointly share the management of their affairs; and as their members increase, they must delegate this management through the sheer technical requirements of communication.

The Government then, even in this area of decreasing individual influence, is in reality us, managing our own affairs. What it is, how it is composed, and what it does is a reflection of ourselves. To the extent we have opportunity to exert influence, however, small, its actions are ours, its sins are ours. And having opportunity, and not exercising it, we have sinned twice—once by not having availed ourselves of a talent we possess, and once in having perhaps contributed to a wrong by our inaction.

Our guilt of nonparticipation in politics, (the influencing of the composition or activities of Government) is not mitigated with the fact that the extent of our influential participation is less than what it was in Lincoln's or Teddy Roosevelt's era. To the extent that our disinterest and lethargy and inaction have contributed to the waning of the individual as a force in society, our guilt is increased.

Nor will we be judged less harshly because participation is more difficult or seems to require more endurance, more effort, or sacrifice—if anything, the difficulties only measure our sincerity and devotion. We can hardly whimper justifiably at the efforts and sacrifices now necessary to do something about the conduct of our Government when Christians at one time had to be lion fodder to do something about it.

Life is politics. Any time anyone tries to do anything about anything with more than just themselves involved, they are in politics, influencing a course of action. To the extent that it is "messy" or "dirty," is only a reflection of the frailties of the human participants, and these frailties are not peculiar to activities relating to the Government. You can't do much to influence a football game just sitting in the grandstand, and they don't call off the game just because the field is muddy.

Our responsibility and the risks of shirking it are clear. At the last day, it will not be us who will judge our rationalizations.

ADJOURNMENT UNTIL THURSDAY, JULY 18

Mr. ALLOTT. Mr. President, if there is no further business to come before the Senate at this time, I move, pursuant to the order previously entered, that the Senate adjourn until 12 o'clock noon on Thursday, July 18.

The motion was agreed to; and (at 5 o'clock and 17 minutes p.m.) the Senate adjourned, under the order previously entered, until Thursday, July 18, 1963, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate July 16, 1963:

THE JUDICIARY

Abraham L. Marovitz, of Illinois, to be U.S. District Judge for the Northern District of Illinois vice Julius H. Miner, deceased.

IN THE COAST GUARD

The following U.S. Coast Guard officers for promotion to the permanent rank of rear admiral in the U.S. Coast Guard:

Capt. George D. Synon
Capt. John B. Oren

right of a State or community to protect itself against an unwarranted invasion on the part of the Federal Government. Even if an atomic reactor were proved beyond doubt to be as safe as a steam boiler, there is no sound reason why the Federal Government should be allowed to infringe upon a local prerogative. The violation is all the more objectionable when centralized government arrogantly decides to set up an instrument believed to be a source of serious danger—at the least, a source of mental cruelty to residents. Since many of the most enthusiastic supporters of a civilian nuclear program are themselves wary of the safety factor, this anxiety is most understandable.

In this regard, a paragraph from the remarks by Dr. Clifford K. Beck, Deputy Director of Regulations, U.S. Atomic Energy Commission, on December 2, 1961, is cited herewith:

On the other hand, however, it cannot be said that the probability is zero, i.e., that there is no likelihood at all that a serious accident will occur. For one thing, it is not possible to provide enough safeguards to insure completely that some potential accident will not occur by some unexpected combination of circumstances. For another, safeguards may fail; not only mechanical safeguards but also the human safeguards because, in the final analysis, a substantial element of safety depends on human factors, which are far from infallible. Finally, some potential accidents may have been overlooked. Hence, for any reactor, it must be recognized that some residual element of hazard can never be completely eliminated. As in all other human endeavors, some risk will remain; the only fully safe reactor is one that is never built.

Senator CLINTON P. ANDERSON, a member of the Joint Committee on Atomic Energy, included these remarks in an address on January 15, 1960:

Atomic reactors, despite our elaborate safeguards, are very dirty and dangerous gadgets. They produce hazardous fission products, and as their use increases the contamination from these products will gradually spread. They also produce huge quantities of highly dangerous wastes, wastes which we have not yet discovered how to dispose of. Right now, the United States has 65 million gallons of radioactive wastes stored in underground tanks—and they can not be kept there forever. Lastly, the atomic reactor utilizes a chain reaction, which means the ever-present danger of a "runaway." This happened at Windscale in England, you will recall, rendering the area uninhabitable for 200 years.

In an opinion delivered in 1961 by the Supreme Court on the issuance of an AEC construction permit for a nuclear reactor, Mr. Justice Douglas and Mr. Justice Black issued this cryptic comment:

This legislative history makes clear that the time when the issue of safety must be resolved is before the Commission issues a construction permit. The construction given the act by the Commission (and today approved) is, with all deference, a lighthearted approach to the most awesome, the most deadly, the most dangerous process that man has ever conceived.

Finally, Mr. Speaker, the distinguished gentleman from California [Mr. HOLIFIELD], another member of the Joint Atomic Energy Committee, included this excerpt in a speech to the House on July 5 of this year:

For instance, the great city of Richland, Wash., has a number of reactors. If there should be an accident in one of these reactors—and we do not think that there will be and we hope that there will not be—the health of the people of Washington, Oregon, and possibly California might be involved.

Mr. Speaker, I believe that the comments of these outstanding authorities attest to the urgency of enactment of the bill which I have introduced today.

THE U.N. CHARTER AND THE CUBAN QUARANTINE

(Mr. LAIRD asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and include extraneous matter.)

Mr. LAIRD. Mr. Speaker, there has been much discussion of the U.N. Charter and the Cuban blockade or quarantine of last fall.

I call the attention of my colleagues to an analysis of the legal foundations of last October's quarantine of Cuba, written by Capt. Joseph B. McDevitt, U.S. Navy, Director of the International Law Division of the Office of the Judge Advocate General of the Navy. This paper is an excellent supplement to the article by Abram Chayes, legal adviser to the Department of State, which appeared in the April 1962 issue of Foreign Affairs. I call my colleagues' attention in particular to Captain McDevitt's conclusions. He points out that the real legal justification for the quarantine was self-defense, a right recognized by article 51 of the Charter of the United Nations. It is important to bear this fact in mind in case future crises warrant a similar action by the United States.

Captain McDevitt's article follows:

THE U.N. CHARTER AND THE CUBAN QUARANTINE

(By Capt. Joseph B. McDevitt, U.S. Navy)

(NOTE.—Captain McDevitt is currently Director of the International Law Division of the Office of the Judge Advocate General of the Navy. He holds the A.B. and LL.B. degrees from the University of Illinois and is a member of the Illinois Bar. Captain McDevitt is also a graduate of the senior course at the Naval War College and served for 3 years on the Joint Staff of the Joint Chiefs of Staff before assuming his present duties.)

On October 18, 1962, a leading U.S. policymaker addressed a distinguished audience at the Free University of Berlin.[1] He drew a picture of how, in his belief, our foreign policy had unfolded during the 22 months since President Kennedy's administration came to Washington. Referring to the dangers represented by Cuba he said that, since the events of April 1961,[2] we and our friends in the Western Hemisphere had placed ourselves in a legal position to move together.

As he spoke in Berlin, Washington was alive with unusual activity. Two days previously, the President had received the first preliminary hard information that offensive missile sites were in preparation on Cuba.[3] A 24-hour schedule had become routine for many offices. There was widespread speculation as to what was about to happen. It was not confined to the press and general public. Even in the Pentagon only a few men had the full picture. Consequently, the President's announcement of the initiation of the world's first quarantine in the Caribbean had a tremendous psychological impact. From all indications it caught the Soviets by surprise.

It became effective at 10 a.m. eastern standard time on Wednesday, October 24.[4] During the ensuing 27 days[5] over 200 naval ships, and scores of planes, participated in its execution. Offers of assistance were received from the Latin American States and some of their ships and aircraft took part in the operation.

Thus, there can be no doubt thta in the actual implementation of the quarantine the American States did move together. Disagreement has arisen, however, as to whether, as a matter of law, they acted as a regional agency under chapter VIII, articles 52–54 of the U.N. Charter or in exercise of the independent right of collective self-defense recognized in chapter VII, article 51 of the charter.[6]

POSITION OF THE U.S. GOVERNMENT[7]

The legal basis relied on by the U.S. Government to sustain the quarantine may be summarized as follows. The fundamental source of authority was the Inter-American Treaty of Reciprocal Assistance (Rio Treaty), to which the United States, Cuba, and 19 other countries are parties. The arrangements under this and related treaties constitute the Inter-American system. The Rio Treaty provides for collective action, including use of armed force, both in case of armed attack and in case any American state is threatened "by aggression which is not an armed attack * * * or by any other fact or situation that might endanger the peace of America." On October 23, 1962, the organ of Consultation, a body established under article 12 of the Rio Treaty, recommended that members of the Organization of American States take all measures, individually and collectively, including the use of armed force, which they deem necessary to prevent the further introduction of military material and supplies into Cuba from the Sino-Soviet powers. This recommendation was authorized by sections 6 and 8 of the Rio Treaty. The quarantine, imposed in accordance with the recommendation, was, therefore, pursuant to the authority and procedures of that treaty.

The U.S. Government also stated that the quarantine was consistent with the United Nations Charter. Article 52(1) of the char-

[1] Address by Mr. Walt W. Rostow, Counselor and Chairman Policy Planning Council, Department of State, before the Ernest Reuter Society, 47 Department State Bulletin 675 (1962).

[2] Presumably a reference to the attempted invasion of Cuba at the Bay of Pigs, on Apr. 17, 1961.

[3] Radio-television address by the President on Oct. 22, 1962: "The U.S. Response to Soviet Military Buildup in Cuba." See Department of State publication No. 7449, released October 1962.

[4] Presidential Proclamation No. 3504, Oct. 23, 1962, 27 Federal Register 10401 (1962).

[5] The quarantine was lifted on Nov. 20, 1962, by Presidential Proclamation No. 3507, 27 Federal Register 11525 (1962).

[6] T.S. No. 993, Charter of the United Nations.

[7] Address by Abraham Chayes, legal adviser, Department of State, on the legal case for U.S. action on Cuba, 47 Department of State Bulletin 763 (1962); Chayes, "Law and the Quarantine of Cuba," Foreign Affairs, April 1963, p. 550; American Bar Association, Washington Letter (Nov. 9, 1962), containing a discussion entitled "Legal Basis for the Quarantine of Cuba" which is stated to reflect "the line of analysis of the Office of the Legal Adviser, Department of State."

ter specifically contemplates the use of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action. The activities of regional organizations must be consistent with the purposes and principles of the United Nations. If they are, they do not contravene any limitation in article 2(4) which prohibits any threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. The charter provisions dealing with regional organizations were adopted with the Inter-American system specifically in mind. It was stressed during the debates at the San Francisco Conference that the arrangements of the system for the maintenance of peace and security in the hemisphere were consistent with the charter. The quarantine was imposed in accordance with one of the basic agreements forming the system and was designed to deal with a threat to peace and security. It was not, therefore, inconsistent with the purposes and principles of the United Nations or in violation of article 2(4).

Finally, the U.S. Government maintained that the quarantine was not "enforcement action" by a regional organization requiring Security Council "authorization" under article 53 of the charter. The Organ of Consultation did no more than recommend. The usage of the term "enforcement action" elsewhere in the charter and a recent advisory opinion of the International Court of Justice support the view that only an application of force required by a regional organization of its members can constitute "enforcement action" within the meaning of article 53. Furthermore, even if the quarantine were viewed as "enforcement action," there is precedent for the position that Security Council "authorization" does not necessarily mean either prior or express approval. In this connection, it should be noted that the Security Council commenced debate on the quarantine before it went into effect, and although a Soviet Union resolution condemning the quarantine was introduced, the Security Council chose to work through the negotiating efforts of the Secretary General.

Some international law publicists have taken issue with the theory of the U.S. Government, although themselves upholding the legality of the quarantine on the grounds that it was purely an action of self-defense.[8] At no time, however, has the U.S. Government stated that the legal basis for the quarantine which it advanced was the only basis which could be set forth. Rather, the position of the U.S. Government was presented as a sound and sufficient basis but not necessarily an exclusive one.

Naval officers need not be concerned with choosing between different theories of legality. Of real concern, however, is the fact that some international law publicists are saying that the quarantine was without any legal foundation whatever.[9] That charge should be countered with all available arguments.

It is the purpose of this article to discuss two additional theories upholding the legality of the Caribbean quarantine under the U.N. Charter other than the publicly stated position of the U.S. Government. The first theory to be discussed will, like the Government's theory, also support the quarantine as an appropriate action by the members of the OAS as a regional agency under article 52 of the charter.[10] The second will support it as an act of collective self-defense under article 51 of the charter by members of a collective security organization, the Rio Pact.[11] While the member States are identical in both theories, there is a legal distinction between a regional agency and a collective security organization. Accordingly, each theory will be analyzed separately.

REGIONAL AGENCY THEORY

Article 52(1) of the U.N. Charter provides, in part, as follows: "(1) Nothing in the present charter precludes the existence of regional * * * agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such * * * agencies and their activities are consistent with the purposes and principles of the United Nations."

This article specifies four requisites for the existence of a regional agency: (1) it must deal with matters relating to the "maintenance of international peace and security"; (2) the matters must be "appropriate for regional action"; (3) its activities must be consistent with the purposes, and (4) the principles, of the United Nations.

Requisites (1) and (3) are closely related, since the cardinal purpose of the United Nations is to "maintain international peace and security."[12] For reasons stated in the previous summary of the Government position, the quarantine very clearly satisfied those requisites. As for requisite (4), it is a cardinal principle of the U.N. that all members "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."[13] The quarantine countered an illegal threat of such force against the territorial integrity of the American States. Therefore, it was not inconsistent with the principles of the U.N. To determine whether he quarantine was "appropriate for regional action" it is necessary to review the historical background of article 52, and the practice of the OAS and the Security Council under that article.

The Dumbarton Oaks proposals of 1944 were drafted by China, England, the United States and the U.S.S.R. Those proposals were the blueprint for an international organization and later evolved into the United Nations Charter.[14] However, they also envisaged the existence of regional agencies. They contemplated that all "enforcement action" after an international organization had come into being would be taken by, or under the authority of, the Security Council of that organization. The specific enforcement actions were set forth in two paragraphs of the proposals. Paragraph 3 of section B described "diplomatic, economic, or other measures not involving the use of armed force" which the Security Council should be empowered to employ to give effect to its decisions. Paragraph 4 of the same section provided that in the event the Security Council should consider the above measures inadequate it should be empowered "to take such action by air, naval, or land forces as may be necessary to maintain or restore international peace and security." All such measures, listed in both paragraphs, were viewed as enforcement actions requiring Security Council authorization.

The American States were fully aware of the Dumbarton Oaks proposals when they adopted the Act of Chapultepec in Mexico City on March 3, 1945.[15] Notwithstanding the supranational objective of the proposals, the America States provided in the Act of Chapultepec that they could, on their own initiative and without reference to any international organization, act to meet "threats and acts of aggression." They agreed that appropriate acts should extend to the "use of armed force to prevent or repel aggression" as well as the usual pacific measures.

About 2 months later, the same American States participated with other nations of the world in the drafting of the U.N. Charter at the San Francisco Conference. It has been fairly well established that the Latin American nations threatened to withhold support for the charter unless it provided greater autonomy for regional agencies than was contemplated by the Dumbarton Oaks proposals.[16]

They won their point. Two-pronged modifications were agreed upon. In one respect they concerned the right of self-defense which will be discussed later. But they also concerned the pacific settlement of disputes by regional agencies which we are presently considering.

The regional agency provisions of the Dumbarton Oaks proposals evolved into article 52 of the U.N. Charter. However, the proposals had not contained what is now article 52(2). This subparagraph represents one of the modifications made at the insistence of the Latin American nations. Article 52(2) provides, in part, that: "The Members of the United Nations * * * constituting such agencies shall make every effort to achieve pacific settlement of local disputes * * * by such regional agencies before referring them to the Security Council."

This compromise language broke the monopoly of power planned for the Security Council in the proposals. It made it possible for regional agencies to take at least some actions; i.e., "pacific settlement" actions, which do not require Council authorization.

Prior to the quarantine, the practice of the OAS under article 52(2) had two notable characteristics. It had involved only local disputes in the strict sense, that is only disputes exclusively involving States parties to the O.A.S.[17] Secondly, the measures taken had been clearly pacific in nature and had never extended to the application of armed force.

It is submitted that in practical effect and in the public consensus the quarantine was an action primarily aimed at illegal activities of the U.S.S.R. in this hemisphere. Cuba, as an entity, was only collaterally affected. Therefore, to hold that it was an appropriate measure for regional action under article

[8] Mallison, "Limited Naval Blockade or Quarantine-Interdiction: National and Collective Defense Claims Valid Under International Law," 31 George Washington Law Review 335 (1963); Seligman, "The Legality of the Cuban Quarantine," 49 ABA Journal 142 (February 1963). Other authorities supporting the theory of self-defense are: Professor Larson of Duke University in a letter to the New York Times, Nov. 12, 1962, p. 28, cols. 5, 6; Professors Dillard, Pugh, Lissitzyn, and Berle, Columbia Law School News, Nov. 7, 1962.

[9] View of Prof. Quincy Wright as reported in the Columbia Law School News, Nov. 7, 1962, p. 1, col. 4.

[10] T.I.A.S. No. 2361, Charter of the Organization of American States. The Charter states, in part: "Within the United Nations, the Organization of American States is a regional agency."

[11] T.I.A.S. No. 1838, Inter-American Treaty of Reciprocal Assistance (Rio Pact).

[12] Op. cit. supra, note 6, art. 1.

[13] Id., art. 2(4).

[14] Department of State Publication No. 2297, "Dumbarton Oaks Proposals for a General International Organization," Oct. 7, 1944.

[15] T.I.A.S. No. 1543, act of Chapultepec.

[16] Hearings before the Committee on Foreign Relations, U.S. Senate, 81st Cong., 1st sess., on Executive L, North Atlantic Treaty, pt. 1, p. 268 (statement by Senator Vandenberg).

[17] See Goodrich and Hambro, "Charter of the United Nations, Commentary and Documents," 314 (2d ed. 1949), for the view that this was the intended meaning of the words "local disputes."

52(2) would require a broad interpretation of the term "local disputes." It would not seem unreasonable to regard it as including any dispute arising within the geographical area over which a regional agency exercises authority.[18] In this instance it would be the region described in article 4 of the Rio Pact. The 500-mile radius announced by the United States as the outer reach of the quarantine area from Cuba was within that geographic region.[19]

Whether the quarantine was a measure for pacific settlement of the dispute depends upon whether it can be held not to have been "enforcement action" within the meaning of article 53(1) of the charter. That article provides, in pertinent part, that: "The Security Council shall, where appropriate, utilize such regional * * * agencies for enforcement action under its authority. But no enforcement action shall be taken * * * by regional agencies without the authorization of the Security Council."

Clearly, any action qualifying as "enforcement action" is legally beyond the unilateral reach of a regional agency.

Very definite views as to what would constitute enforcement action have been voiced in Security Council proceedings relating to OAS actions taken against the Dominican Republic and Cuba. In August 1960, the Ministers of Foreign Affairs of the OAS concluded that the Dominican Republic had committed acts of intervention and aggression against the Republic of Venezuela.[20] It was agreed, inter alia, that there should be a breaking of diplomatic relations by all member States, and a partial interruption of economic relations beginning with the immediate suspension of trade in arms and implements of war of every kind.[21] In September 1960 the U.S.S.R. sought, in a proposed resolution, to have the Security Council give its retroactive approval to this action of the OAS.[22] It did so on the theory that the measures taken were enforcement actions requiring Council approval under article 53(1) of the charter. The resolution was defeated in favor of one submitted by Argentina, Ecuador, and the United States which provided that the OAS action would merely be noted.

There is little difficulty in interpreting the Security Council's action as holding that the pacific measures taken against the Dominican Republic were appropriate actions for a regional agency and were not enforcement actions requiring Security Council approval.[23]

In the case of Cuba the Ministers of Foreign Affairs of the OAS met at Punta del Este, Uruguay, in January 1962, and recommended, inter alia, a similar suspension of trade in arms, and the exclusion of the present Government of Cuba from participation in the Inter-American system.[24] In March 1962 Cuba sought Security Council adoption of a resolution which would have referred the following principal question to the International Court of Justice:[25] "[C]an the expression 'enforcement action' in article 53 of the United Nations Charter be considered to include the measures provided for in article 41 of the United Nations Charter?"[26] The Council rejected the Cuban resolution and thus again held, in effect, that pacific measures taken by a regional agency against one of its members are not enforcement actions requiring Security Council authorization.

The International Court of Justice has held that the use of armed force by the U.N. in the Suez and in the Congo pursuant to General Assembly recommendations did not constitute enforcement actions because member States were not obligated to carry out the recomendations.[27] Under the Rio Pact no member State is required to use armed force without its consent even though, as noted previously in the discussion of the Dominican Republic matter, other measures decided upon may be binding upon members.[28]

There is a link in the relationship between the Security Council and the General Assembly which has been missing in the relationship between the Security Council and a regional agency. The Uniting for Peace resolution[29] of the United Nations permits the Assembly to do much of what the Council was authorized to do under chapter 7 of the charter. Pursuant to that resolution the General Assembly has recommended the use of armed force in situations such as the Suez and the Congo. A similar specific basis for regional agency use of armed force without Security Council authorization does not exist. However, the Uniting for Peace resolution did not foreclose, and perhaps even contemplated, the establishment of such a basis. In part D of the resolution there was established a committee to study and report to the Security Council and the General Assembly methods "which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defense and regional arrangements (arts. 51 and 52 of the charter)."

The OAS resolution of October 23, 1962, which authorized the use of armed force (without prior Security Council authorization and merely providing for a report to the Security Council on action taken as required by article 54) can be compared with the uniting for peace resolution. If such a resolution by a regional agency is valid it would follow that in today's world a regional agency exists under the U.N. Charter as an organ of the United Nations for all peacekeeping purposes within its area including the use of armed force to whatever extent is required to maintain the peace. Such a concept appears to have been expressed by the Honorable Abram Chayes in his address on November 3, 1962, previously cited, when he said:

"[E]vents since 1945 have demonstrated that the Security Council, like our own electoral college, was not a viable institution. The veto had made it substantially useless in keeping the peace.

"The withering away of the Security Council has led to a search for alternative peacekeeping institutions. In the United Nations itself the General Assembly and the Secretary General have filled the void. Regional organizations are another obvious candidate."[30]

On the other hand, if the quarantine was not a measure involving the use of armed force, then it was clearly not enforcement action under previous Security Council practice and was appropriate for regional action. The question then becomes: "Did the quarantine involve the actual use of armed force?"

In choosing the quarantine the United States avoided resort to an immediate use of armed force. Force was present at all times. Its use was threatened by the President if it should become necessary.[31] But the need did not arise and force was never physically applied.

The United States did not intend a hostile or belligerent act but merely sought a peaceful resolution of the problem. The quarantine was specifically designed to meet a threat short of war. It was not a belligerent blockade. It was, at most, a limited blockade "for winning without killing."[32] Its very name, "quarantine," was chosen to impart its nonbelligerent character. No ships or materials were seized. While the procedure of visit and search was carried out on board the Soviet-chartered Lebanese-flag freighter *Marucla*, it took place with the full cooperation of the master of that vessel.[33] In effect, the entire operation amounted to no more than a partial interruption of sea communications with Cuba. Both article 41 of the charter and article 8 of the Rio Pact authorize the italicized measure as one separate and apart from the use of armed force.[34]

Upon the basis of the above reasoning it can be concluded that the quarantine was not an "enforcement action" within the meaning of article 53(1) of the charter. Rather, it was an appropriate measure for implementation by a regional agency (OAS)

[18] But see note 23, infra.

[19] For the 500-mile zone see map shown in New York Times, Oct. 23, 1962, p. 32, col. 2–4.

[20] Department of State Publication No. 7409, "Inter-American Efforts To Relieve International Tensions in the Western Hemisphere 1959–60," pp. 65–70.

[21] Under the Rio Pact the taking of these measures was obligatory on all members since there was a finding of aggression. Art. 6 provides that agreed measures "must be taken in case of aggression." In situations other than aggression, agreed measures are permissive, since the article merely provides that they "should be taken."

[22] U.N. Security Council Off. Rec. 15th year, 893d–895th meetings, Sept. 8–9, 1960 (S/PV. 893–5).

[23] The Tunisian representative questioned whether even such pacific measures could have been taken by the OAS against a nonmember state. While agreeing with the other members of the Security Council that the decision of the Organization of American States involved nonmilitary measures taken against one member of that Organization by its remaining members, he said: "The case would have been different had it been a question of measures taken against a state not a member of that regional organization."

[24] Resolutions II and VIII adopted unanimously in plenary session on Jan. 31, 1962, at the 8th Meeting of Consultation of Ministers of Foreign Affairs, 46 Department of State Bulletin 279, 282 (1962).

[25] U.N. General Assembly Off. Rec. 17th sess., supp. No. 2 (A/5202), Report of the Security Council to the General Assembly July 16, 1961–July 15, 1962, Chap. 6, 51–56.

[26] Article 41 lists measures not involving the use of armed force which "may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations."

[27] "Certain Expenses of the United Nations" (art. 17, par 2, of the charter), advisory opinion, July 20, 1962, I.C.J. Rep. 151. The major point of disagreement between the majority of the Court and most of the dissenting judges was whether use of armed force is a valid action even for the General Assembly. The majority held it valid. However, the majority opinion also supports the proposition that even pacific measures, if they are coercive (i.e., if member States are obliged to enforce them, as in the instance of the actions taken by the OAS against the Dominican Republic (see note 21, supra,) would be enforcement actions.

[28] Op. cit. supra, note 22.

[29] U.N. General Assembly Off. Rec., 5th sess., supp. No. 20, at 10 (A/1775), adopted by the General Assembly, Nov. 3, 1950.

[30] Op. cit. supra, note 7, at p. 765.

[31] Op. cit. supra, note 4.

[32] See "Blockade: For Winning Without Killing" by Capt. (now Rear Adm.) Robert D. Powers, Jr., U.S. Navy, Naval Institute Proceedings, Aug. 1958, p. 61.

[33] Department of Defense News Release No. 1745–62, Oct. 26, 1962.

[34] See supra, note 26.

in the settlement of a local dispute in accordance with article 52(2) of the charter.

THEORY OF COLLECTIVE SELF-DEFENSE

The Dumbarton Oaks proposals were silent with respect to the right of self-defense. The drafters of the proposals had considered it unnecessary to set forth that right explicitly since it is universally regarded as the inherent right of every sovereign nation. In this respect, the proposals were similar to the Kellogg-Briand Pact of 1928 which contained no explicit reservation of the right. Explaining its omission in a letter to our Ambassador in France, the Secretary of State, Mr. Kellogg, said: "That right [of self-defense] is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaid and not condemn its action." [35]

The Latin American States were not content with similar assurances. They feared that under the Yalta formula for Security Council voting,[36] it would not be possible for a regional agency to take action except upon the affirmative vote of seven members of the Council including all of its five permanent members. Thus, in their view, the veto could effectively bar regional action in self-defense. In an effort to win their votes, Senator Vandenberg drafted compromise language which evolved into what is now article 51 of the charter.[37] That article provides that:

"Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

The article can be interpreted to limit the exercise of the right of self-defense to a situation in which there has been an "armed attack." Since the adoption of the charter, and even since the recent Cuban crisis, some authorities have contended that the words should be given that interpretation.[38]

There are possible arguments to support that view. In 1945, only the United States possessed the atomic bomb. In our hands it was no threat to world peace. In fact, we were highly optimistic at the time that our soon-to-be-preposed Baruch plan [39] for the control of atomic energy would be adopted by the nations of the world. Under it there would have been no bomb—all atomic energy would have been devoted exclusively to peaceful uses.

Also, in 1945, a significant, surprise conventional military attack was unlikely. Preparations for any such attack would be known sufficiently in advance to permit consultation with, and a request for action by, the Security Council. Lesser conventional attacks, such as border-type incursions, would not cause irreparable injury and could be rectified by appropriate Security Council action to restore the peace. The belief that such action could be anticipated from the Security Council was nowhere more optimistically voiced than by U.S. spokesmen themselves. For example, the Honorable Edward R. Stettinius, Jr., Chairman of the U.S. delegation to the San Francisco Conference, in his statement before the Senate Committee on Foreign Relations advocating ratification of the charter, said: "I believe the five major nations proved at San Francisco beyond the shadow of a doubt that they can work successfully and in unity with each other and with the United Nations under this Charter." [40]

However, in 1947, 2 years and 21 vetoes later, an Assistant Secretary of State observed: "[T]he original intentions which we thought were held by all the great powers at San Francisco about using the veto only in the most grave and important circumstances—and then only sparingly and with due regard to the purposes of the charter—have not been fulfilled." [41]

And in the course of the floor debate during December 1947 concerning the giving of Senate consent to ratification of the Rio Pact, Senator Vandenberg stated: "[T]he original unilateral authority of the United States stands where it always stood. Even under the language of section 51 of the United Nations Charter we simply become responsible to the United Nations as the result of our obligation to it for what we do in the exercise of the Monroe Doctrine; and wherever the Security Council takes adequate control of a situation into which we may have injected ourselves, then the final authority rests with the United Nations and not with us." [42]

Today's Congress, faced with a 1962-type threat to our security (and after more than 100 Soviet vetoes), follows Senator Vandenberg's interpretation. On October 3, 1962, it resolved that the United States "is determined * * * to prevent by whatever means necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere." [43]

The resolution very clearly envisages possible U.S. use of armed force in situations short of actual armed attack. Under any theory of legality, such unilateral action would be justifiable only as defensive.

The President, too, in his addresses, press conferences, and actions relating to the Cuban crisis, adopted a similar view. At his press conference on September 13, 1962, he resisted heavy domestic pressures for U.S. unilateral military intervention in Cuba saying that it was not then either required or justified. "But," he said, "let me make this clear once again: If at any time the Communist buildup in Cuba were to endanger or interfere with our security in any way * * * then this country will do whatever must be done to protect its own security and that of its allies." [44]

In his radio-television address on October 22, 1962, the President noted "this secret, swift and extraordinary buildup of Communist missiles * * * this sudden, clandestine decision to station strategic weapons for the first time outside of Soviet soil." He then said: "Acting, therefore, in the defense of our own security and of the entire Western Hemisphere * * * I have directed that * * * a strict quarantine on all offensive military equipment under shipment to Cuba * * * [be] initiated." [45]

In the same address, the President directed the taking of two additional steps each of which was consistent with the exercise of the right of self-defense. He asked the Organ of Consultation of the OAS to invoke articles 6 and 8 of the Rio Treaty "in support" of all necessary action. He had already directed the initiation of what, in the view of the United States, the "necessary action" consisted of; i.e., the quarantine. In addition, he asked for an emergency meeting of the Security Council of the United Nations "to take action" against the "Soviet threat to world peace." Article 51 provides that members exercising the right of self-defense shall immediately report their actions to the Security Council. They may continue such actions until the Security Council, to repeat Senator Vandenberg, "takes adequate control of a situation" into which they may have unilaterally injected themselves.

After the President's speech, sometimes durring the evening of October 22, 1962, Ambassador Stevenson handed to the President of the Security Council for the month of October (Mr. Zorin, of the U.S.S.R.) a letter [46] to which was attached a draft resolution.[47] The letter is pertinent to the present discussion in two respects. First, it served notice of defensive action being initiated by the United States in order to give effect to prior OAS determinations:

"In order to give effect to the determination of the countries of the Western Hemisphere which they have recently reaffirmed to safeguard and defend the peace and security of the region against external interference and aggression, the United States is initiating a strict quarantine of Cuba." [48]

Secondly, it referred to the need for "immediate" Security Council action, proposed "the prompt and effective discharge" of the Council's responsibility, and submitted a U.S. draft resolution under which, if adopted, the Council itself would take action. Again, this was consistent with article 51.

When the Security Council met in emergency session at 4 p.m. on October 23, 1962, Ambassador Stevenson said that "the President announced the initiation of a strict quarantine on all offensive military weapons under shipment to Cuba * * * because, in the view of my Government, the recent developments in Cuba—the importation of the cold war into the heart of the Americas—constitute a threat to the peace of this hemisphere and, indeed, to the peace of the world." [49]

Immediately after concluding his lengthy remarks, Ambassador Stevenson stated that he had just been informed of the resolution adopted that afternoon by the OAS. Up to the point of that resolution the quarantine, though not yet in effect, had been unilaterally undertaken by the United States. From that moment on it was an action authorized by all members of the Rio Pact and actively participated in by some.

At 7:06 p.m. the same evening the President formally proclaimed the "interdiction

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[34] "Foreign Relations of the United States," 1928, vol. I, 36–37.

[35] See "Voting in the U.N." by Rear Adm. Robert D. Powers, Jr., U.S. Navy, supra, p. 67.

[36] 93 CONGRESSIONAL RECORD 11127 (remarks of Senator Vandenberg).

[37] See supra, note 9.

[38] Department of State Publication No. 7008, "Documents on Disarmament," vol. I, 1945–59, 7–16.

[39] S. Doc. No. 87, 83d Cong., 2d sess., Review of the United Nations Collection of Documents, 57–58.

[40] 17 Department of State Bulletin 634 (1947), address by Norman Armour, Assistant Secretary of State for Political Affairs.

[41] Op. cit. supra, note 37, 11134.

[42] For text, see 47 Department of State Bulletin 597.

[43] For text, see 47 Department of State Bulletin 481.

[44] Op. cit. supra, note 3.

[45] U.N. Security Council Document S/5181, 47 Department of State Bulletin 724.

[46] U.N. Security Council Document S/5182, 47 Department of State Bulletin 724.

[47] A reaffirmation such as that alluded to in the quoted excerpt was contained in the final communique issued at the conclusion of an informal meeting of Ministers of Foreign Affairs of the American Republics, at Washington, D.C., Oct. 2–3, 1962. For text see 47 Department of State Bulletin 598 (1962).

[48] U.N. Security Council verbatim record of 1022d meeting of Security Council, Oct. 23, 1962 S/PV. 1022.

of delivery of offensive weapons to Cuba." [50] The proclamation read, in part: "Now, therefore, I, John F. Kennedy, President of the United States of America, acting * * * to defend the security of the United States, do hereby proclaim that the forces under my command are ordered * * * to interdict * * * the delivery of offensive weapons and associated materiel to Cuba."

When the President announced the lifting of the quarantine at his press conference on November 20, 1962, he made clear that the defense of our security required continued U.S. surveillance of Cuba.[51] He said: "[I]f the Western Hemisphere is to continue to be protected against offensive weapons, this Government has no choice but to pursue its own means of checking on military activities in Cuba."

Furthermore, in response to a question from a member of the press, he clearly indicated that our exercise of the right of self-defense had been, and should continue to be, in accordance with existing treaties, but that it exists separate from and unrestricted by such treaties:

"The United States has the means as a sovereign power to defend itself. And, of course, exercises that power; has in the past; and would in the future.

"We would hope to exercise it in a way consistent without treaty obligations, including the U.N. Charter. But we, of course, keep to ourselves, and hold to ourselves, under the U.S. Constitution, and under the laws of international law, the right to defend our security. On our own, if necessary—though we, as I say, hope to always move in concert with our allies, but on our own, if that situation was necessary to protect our survival or integrity or other vital interests."

All of these statements and actions by the United States professed to be defensive in nature. They were covered by the umbrella of article 51 provided they were legitimate and not merely self-serving. In this regard, the views of the representative of Ghana, expressed before the Security Council on October 24, 1962,[52] are relevant. He stated that: "in this particular case, if it is recalled that the U.S. delegation, in previous debates, had expressed the view that enforcement action consists of coercive measures involving the use of air, sea, or land forces of the type falling within the scope of article 42, then it is clear that the action contemplated by the United States must be regarded as enforcement action, which is inadmissible in terms of article 53, without the authorization of the Security Council.

"That being so, are there grounds for the argument that such action is justified in exercise of the inherent right of self-defense? Can it be contended that there was, in the words of a former American Secretary of State [Daniel Webster] whose reputation as a jurist in this field is widely accepted, 'a necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation?' My delegation does not think so, for as I have said earlier incontrovertible proof is not yet available as to the offensive character of military developments in Cuba."

At the time he made those remarks the only proof before the Security Council consisted of verbal accusations by the U.S. repsentative, and similar denials by the U.S.S.R. and Cuban representatives. On the following day, Ambassador Stevenson presented aerial photographs unmistakably showing MRBM emplacements.[53] Whether the photographs were regarded as "incontrovertible proof" by the Ghanian and other representatives is not disclosed by the record. Even before they were exhibited, the course which the Security Council was to take had already been set through negotiations conducted in the halls of the United Nations. The Council adjourned to give the Secretary General an opportunity to hold discussions with interested parties and report back.[54]

The principal question is whether the U.S. action was taken in legitimate self-defense. The Ghanaian representative argued (again, before he had seen the photographs) that the threat was not "of such a nature as to warrant action on the scale so far taken, prior to a reference to this Council." [55] In fact, when he made that assertion on the morning of October 24, the quarantine was just becoming effective; yet the problem had been presented to the Council over 36 hours before. Of controlling significance, however, is that the American action drew wide support from the world community. The discovery and public disclosure of the deliberately deceitful conduct of the U.S.S.R. coupled with clear photographic evidence disclosing the rapid and secret construction of sites which would place nuclear missiles on launchers only 4 minutes away from Washington, D.C., resulted in a threat to the peace. There as a clear consensus that such a threat, discovered in near-operational status, did not permit prior consultation with the Security Council and justified the action taken to counter it. Further, there was widespread agreement with the resolution of the Organ of Consultation of the OAS of October 23,[56] recommending that measures be taken, if necessary, which would have involved a far greater use of armed force than that which was employed in enforcing the quarantine. The Organ of Consultation recommended, in part, the use of armed force "to prevent the missiles in Cuba with offensive capability from ever becoming an active threat to the peace and security of the continent." This language clearly condoned not only the measured response of the quarantine, but also the actual elimination of the missiles in Cuba by the physical employment of armed force if this should be necessary to preclude their use.

It is submitted that a realistic test for the legitimacy of an action of individual and collective self-defense under article 51 of the U.N. Charter has evolved from the Caribbean crisis. It is a test which was considered necessary as long ago as 1946, only a year after the charter had been adopted. Mr. Bernard Baruch, arguing that the veto power should not be allowed to protect those who, having agreed, might thereafter violate their agreement not to develop or use atomic energy for destructive purposes, had observed: "The bomb does not wait upon debate. To delay may be to die. The time between violation and preventive action or punishment would be all too short for extended discussion as to the course to be followed." [57]

A U.S. memorandum of July 1946 dealing with the same subject had stated:

"An armed attack is now something entirely different from what it was prior to the discovery of atomic weapons. It would therefore seem to be both important and appropriate under present conditions that the treaty define armed attack in a manner appropriate to atomic weapons and include in the definition not simply the actual dropping of an atomic bomb, but also certain steps in themselves preliminary to such action." [58]

More recently, Prof. Julius Stone posed the following question:

"[S]uppose military intelligence at the Pentagon received indisputable evidence that a hostile state was poised to launch intercontinental ballistic missiles, at a fixed zero hour only 24 hours ahead, against New York, Boston, and Washington, would it be an aggressor under the charter if it refused to wait until those cities had received the missiles before it reacted by the use of force? We assume, of course, that it should exhaust its means of defense, and all means of aborting the attack by nonviolent means; but at a pinch, if these cannot give it assurance, is it bound by law to wait for its own destruction?" [59]

And in a footnote, he suggested the answer:

"It is easy enough to assert * * * that no threat or danger can possibly ground legitimate self-defense until actual aggression occurs, because preventive war cannot be legitimate. But under modern conditions we may yet have to distinguish between legitimate and illegitimate anticipatory self-defense." [60]

In much the same vein, President Kennedy, in his radio-television address on October 22, said:

"We no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation's security to constitute maximum peril. Nuclear weapons are so destructive and ballistic missiles are so swift that any substantially increased possibility of their use or any sudden change in their deployment may well be regarded as a definite threat to peace." [61]

In these words the President made a clear distinction between the missile threat which existed in Cuba from that which had existed for some time from within the territory of the U.S.S.R. He went ahead to point out that prior to the establishment of nuclear missiles in Cuba, there had existed a precarious status quo which insured that the weapons would not be used by either side in the absence of some vital challenge. In effect, this meant that neither side suspected the other of harboring the intention to actually use the missiles without provocation. In Professor Stone's hypothetical question, the provocation consisted of indisputable evidence of a U.S.S.R. intent to launch. In the Cuban situation the sudden clandestine decision to plant strategic missiles outside the Soviet Union, and the secret, swift, and extraordinary buildup of those missiles in Cuba, were indicative of an ominous change in Soviet intent. They had never trusted such missiles even in the territories of their more reliable satellites. Yet here they were

[50] Op. cit. supra, note 4.

[51] For text, see transcript of President's news conference, Washington Post, Nov. 21, 1962, p. A6.

[52] U.N. Security Council verbatim record of 1,024th meeting of Security Council, Oct. 24, 1962, S/PV. 1024.

[53] U.N. Security Council verbatim record of 1,024th meeting of Security Council, Oct. 25, 1962, S/PV. 1025, 36–40.

[54] On Oct. 29, 1962, President Kennedy appointed Mr. John J. McCloy, Under Secretary of State George Ball, and Deputy Secretary of Defense Roswell Gilpatric to carry on negotiations for a conclusion of the Cuban crisis with the U.N. Secretary General and Soviet Deputy Foreign Minister Vasily Kuznetsov. On Jan. 7, 1963, a joint United States-Soviet letter, signed by Ambassador Stevenson and Mr. Kuznetsov, informed the Secretary General of the conclusion of their negotiations, and their belief that "it is not necessary for this item to occupy further the attention of the Security Council at this time," 58 Department of State Bulletin 153 (1963).

[55] Op. cit. supra, note 52, at 51.

[56] OAS resolution of Oct. 23, 1962. For text, see 47 Department of State Bulletin 722 (1962).

[57] New York Times, June 15, 1946, p. 4, col. 5.

[58] Department of State Publication No. 2702, "International Control of Atomic Energy, Growth of Policy," p. 164.

[59] Stone, J., "Aggression and World Order," 99–100 (1958).

[60] Id., at 100.

[61] Op. cit. supra, note 3, 4.

placing them within the reach of one of their most notoriously unstable puppets—a man well known to bear a strong personal antipathy for the United States.

Notwithstanding this evidence, and the President's considered decision that it posed a serious threat to our security, some persons have failed to grasp the underlying gravity of the situation and apparently have adopted the line of reasoning that the Soviet missiles could have been intended merely as a defensive deterrent to a U.S. invasion of Cuba. These individuals draw a complete analogy between those missiles and the Jupiters which were in Turkey to deter Soviet aggression there. The analogy is far from complete and is very one-sided. The U.S. Dewline warning system will provide adequate advance notice of the launching of missiles from the Soviet Union to permit the Strategic Air Command ground alert nuclear retaliatory forces to be airborne before the missiles impact in the United States. With the capability of launching missiles from Cuba, the Soviets would be able to by-pass the Dewline. Such a Soviet capability would have greatly imbalanced the "precarious status quo" which both sides had carefully maintained for several years.

In such circumstances no nation can be held to an interpretation of article 51 which would require that it refrain from acting until the missiles had landed on target. When, in 1928, Secretary Kellogg criticized the effort to define self-defense in the pact which bore his name, he said that "it is far too easy for the unscrupulous to mold events to accord with an agreed definition."[62] How simple it would have been for the Soviets (and how fatal for us) to have been able to hide behind a literal interpretation of article 51 while establishing the capability in Cuba of subduing us in a single surprise attack.

However, no definition can infringe upon a natural and inalienable right. Article 51 does not do so. The right of self-defense is one which has not been yielded by any of the members who have signed the U.N. charter. Mr. Warren Austin expressed this very clearly in the hearings before the Senate Foreign Relations Committee on the North Atlantic Treaty: "In my mind article 51 does not grant a power. It merely prohibits anything contained in the charter cutting across an existing power. This existing power is not dependent on the charter, it is dependent upon international law and the customs of people, and that is the inherent right of self-defense."[63]

Today, the right of self-defense exists in a modernized version which is in all respects in consonance with the advances of technology and science. When the threat is one involving the possible use of modern nuclear-armed missiles, the test of an action taken in defense against that threat is, as Prof. Myres McDougal has described it, "that most comprehensive and fundamental test of all law, reasonableness in particular context."[64] If, when viewed in its true perspective and after the tensions and exigencies of the moment have cased, the action is regarded by the consensus of the world's nations to have been justified, then it has qualified as a legitimate action of self-defense under article 51. Justification would consist of general agreement that the initially assumed threat did in fact, exist, and that the action taken was proportionate to the threat.

Even though the U.S. action countered a mere threat of missile aggression, it is clear from other events that it passed the test stated above with flying colors. One need but compare the world's condemnation of the Soviet repression of Hungary, India's capture of Goa, China's rape of Tibet, and China's invasion of India. In the Caribbean, we had a good case, and the responsible nations of the non-Communist world applauded.

[62] Op. cit. supra, note 35.

[63] Op. cit. supra, note 16, at 117.

[64] McDougal, M., "Law and Minimum World Public Order: The Legal Regulation of International Coercion," p. 218 (1961).

RESOLUTION OF GREETING

(Mr. SELDEN asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and include a resolution from the legislative assembly of the Republic of Costa Rica.)

Mr. SELDEN. Mr. Speaker, yesterday, Speaker McCORMACK, several of our colleagues who are members of the House Foreign Affairs Committee, and I had the privilege of meeting with four representatives of the Congress of Costa Rica—Deputy Rafael Paris, president of the National Legislative Assembly; Deputy Alberto F. Canas, leader of the majority party; Deputy Francisco Ruiz, leader of the National Union Party, and Deputy Jose Joaquin Munoz, a member of the Republican Party.

During the course of our meeting, the Costa Rican legislators presented the following resolution extending the cordial greetings of the deputies of the Legislative Assembly of Costa Rica, in the name of the Costa Rican people, to the Congress and the people of the United States:

RESOLUTION 515

The Legislative Assembly of the Republic of Costa Rica considering, That the union and solidarity of the peoples of the Americas are essential for bringing about a coordinated effort by all the American nations for the purpose of meeting their fundamental needs for work, land, housing, health, and education, thus obtaining greater social benefits for all the inhabitants of the hemisphere;

Considering, That, in order to achieve the union and solidarity of the American peoples, it is necessary to strengthen the cultural and political ties and bonds of friendship between them;

Considering, That the Government and people of the United States of America have constantly manifested friendship and cordiality toward the people of Costa Rica and that, at an early date, Deputy Rafael Paris, Deputy Alberto, F. Cañas, Deputy Francisco Ruiz, and Deputy José Joaquin Muñoz will visit your great country, accepting the kind invitation of your Government;

Considering, That such good-will visits are in the interest of the two countries and that it is desirable for the legislative branch of the Government of Costa Rica to use them for the benefit of the highest ideals of the people whom it represents; Hereby

Resolves, To confer the representation of the Legislative Assembly of Costa Rica on Deputy Rafael Paris, Deputy Alberto F. Cañas, Deputy Francisco Ruiz, and Deputy José Joaquin Muñoz in order that they may represent it before the House of Representatives of the United States of America for the purpose of conveying the cordial greetings of the Deputies of the Legislative Assembly of Costa Rica, in the name of the Costa Rican people, to the great American people, who have the same aspirations for a better, free, and democratic America: Let this be published.

Given in the hall of the Legislative Assembly. San José, the ninth of July, one thousand nine hundred sixty-three.

T. QUIRÓS C.,
Vice President.

CAPTIVE NATIONS WEEK

The SPEAKER. Under previous order of the House, the gentleman from Connecticut [Mr. MONAGAN] is recognized for 2 hours.

(Mr. MONAGAN asked and was given permission to revise and extend his remarks.)

Mr. MONAGAN. Mr. Speaker, once again we pause to observe Captive Nations Week, and it is appropriate that this observance should come in the month of July when we celebrate two great milestones in the history of freedom—Independence Day and Bastille Day.

President Kennedy has issued a proclamation setting aside the week of July 14 as a time to consider anew the fate of our fellowmen behind the Iron Curtain and we, in Congress, have a further opportunity during this week to consider the tragic plight of the citizens of these countries which have fallen under the control of the international Communist movement.

Mr. Speaker, at this point I ask unanimous consent to insert the proclamation of President Kennedy.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

The proclamation is as follows:

CAPTIVE NATIONS WEEK, 1963—A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

Whereas by a joint resolution approved July 17, 1959 (73 Stat. 212) the Congress has authorized and requested the President of the United States of America to issue a proclamation, designating the third week in July 1959 as Captive Nations Week, and to issue a similar proclamation each year until such time as freedom and independence shall have been achieved for all the captive nations of the world; and

Whereas the cause of human rights and dignity remains a universal aspiration; and

Whereas justice requires the elemental right of free choice; and

Whereas this Nation has an abiding commitment to the principles of national self-determination and human freedom:

Now, therefore, I, John F. Kennedy, President of the United States of America, do hereby designate the week beginning July 14, 1963, as Captive Nations Week.

I invite the people of the United States of America to observe this week with appropriate ceremonies and activities, and I urge them to give renewed devotion to the just aspirations of all people for national independence and human liberty.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this fifth day of July in the year of our Lord nineteen hundred and sixty-three, and of the Independence of the United States of America the one hundred and eighty-eighth.

By the President:

JOHN F. KENNEDY.

[SEAL] DEAN RUSK,
Secretary of State.

Mr. MONAGAN. Mr. Speaker, President Kennedy himself has recently given a special focus to our observance. Not only Americans, but lovers of freedom everywhere, including those behind the Iron Curtain must have thrilled to hear the brave and encouraging words which were spoken during his recent trip by the President in Berlin and in Dublin.